IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.494 of 2005

DATE OF DECISION: 08.12.2006

Gurnam Singh

...Appellant.

Versus

Sukhbir Singh and Others

...Respondents.

CORAM: HON'BLE MR. JUSTICE SURYA KANT

PRESENT: Mr.Rajinder Goyal, Advocate,
for the appellant.

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SURYA KANT, J.

This Regular Second Appeal is preferred against the judgments and decree dated 06.05.2003 passed by the learned Additional Civil Judge (Senior Division), Jagadhri and dated 09.12.2004 passed by the learned Additional District Judge, Jagadhri, whereby a suit for declaration with consequential relief of permanent injunction filed by the appellant was dismissed and the said judgment and decree has been affirmed in appeal.

2. The facts may be briefly noticed. The father of the appellant, namely, Parkash Singh executed two registered sale deeds dated 27.12.1990 and 21.06.1994 respectively whereby some agricultural land owned by him was sold in favour of respondents No.1 to 5. The mutations were also duly sanctioned.

3. The appellant filed the present suit for declaration to the effect that he continued to be owner in possession of the suit land and that the sale deeds executed by his father as also the consequential mutations sanctioned on that basis, are illegal, null and void. The above-stated declaration was

sought by alleging that the suit land was ancestral property and could not be alienated by his father-respondent No.6 without any legal necessity.

4. Respondents No.1 to 5 contested the above-stated suit.

5. The following issues arose out of the pleadings of the parties:-

1.“Whether the plaintiff is entitled to seek declaration to the effect that they are owners of the land? OPP

2.Whether the sale deed dated 21.06.1994 relating to the suit land is illegal, null and void? OPP

3.Whether the revenue record prepared on the basis of sale deeds is also null and void and liable to be set aside? OPP

4.Whether the plaintiff is entitled to the injunction as prayed for? OPP

5.Whether the plaintiff has no locus standi to file the present suit? OPD

6.Whether the plaintiff is estopped form filing the present suit as the defendants made improvement on the suit land and if so, its effect? OPD

7.Whether the suit is within limitation period? OPP

8.Whether the suit is in collusion with defendant No.6 and if so, its effect? OPD

9.Whether the suit is false, frivolous and fictitious? OPD

10.Whether the plaintiff has concealed true and correct facts from the court, and if so, its effect? OPD

11.Relief”.

6. While taking issues No.1 to 4 together, the learned civil court held that the sale deeds in question, were validly executed and consideration was passed on to the father of the appellant, namely, respondent No.6. It was also held that respondents No.1 to 5 have proved on record that respondent No.6

was in legal necessity to dispose of the suit land.

7. The learned civil court further held that as the appellant was born on 06.07.1973, the suit filed by him in the year, 1995 was barred by limitation qua the sale deed dated 27.12.1990 (Exhibit P-4) though it was well within limitation qua sale deed dated 21.06.1994 (Exhibit P-5). Issue No.7 was answered accordingly.

8. The learned civil court also held that the appellant was liable to pay *ad valorem* court fee for the reason that he had sought a declaration to set aside the sale deeds and had claimed the consequential relief to declare him the owner in possession of the suit land.

9. The above-stated findings were affirmed by the first appellate court .

10. I have heard learned counsel for the appellant at length and perused the impugned judgments.

11. It is argued that the courts below have grossly erred in holding that the appellant was liable to affix *ad valorem* court fee. Relying upon a judgment of this Court in the case of **Bhagwan Kaur and others Versus Amrik Singh and others 2006(3) PLR 649,** it is contended that since the declaration was sought by the appellant on the ground that the suit property was a co-parcenary joint Hindu family property, therefore, he was not liable to affix the *ad valorem* court fee. I am, however, not impressed by this contention. The appellant has undoubtedly sought a declaration that the two sale deeds as well as consequent mutations sanctioned pursuant thereto are null and void and are liable to be set aside. It was, thus, a suit in which cancellation/setting aside of the sale deeds was sought with a consequential relief to regain possession of the suit land. A suit for declaration regarding cancellation of the sale deeds with consequential relief of possession would necessarily require the affixation of *ad valorem* court fee. In **Bhagwan**

Kaur's case(supra) the facts were all together different.

12. It is then contended that the appellant's suit qua first sale deed dated 27.12.1990 (Exhibit P-4) is also within limitation as such like declaration can be sought within 12 years and not 3 years. In this regard, reliance has been placed upon a judgment of this Court in the case of **Sumer Chand Versus Ram Kishan and others 1990(2) PLR 459.**

13. Even the afore-mentioned contention is also devoid of any merit. In **Sumer Chand's case(supra)** the declaration was sought on the basis of an existing title. In other words, that was a case where declaration was sought on the basis of ownership of the property. In the present case, the appellant seeks to challenge two registered sale deeds executed by his father. The sum and substance of the declaration sought by him was to set aside the above-stated two sale deeds for which the limitation, as rightly held by the courts below, is 3 years only.

14. That apart, in view of the concurrent findings of fact recorded by the courts below while deciding issues No.1 to 4, the above-mentioned contentions do not cut much ice in favour of the appellant.

15. Consequently, I do not find any merit in this appeal and the same is accordingly dismissed.

December 08, 2006 (SURYA KANT)
seema JUDGE